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8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

13 **TRACEY MARIE KAPLANI**
2625 Larmar
14 Los Angeles, CA 90068

15 **Registered Nurse License No. 622790**

16 Respondent.

Case No. 2010-46

A C C U S A T I O N

17
18 Complainant alleges:

19 **PARTIES**

20 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely
21 in her official capacity as the Interim Executive Officer of the Board of Registered Nursing,
22 Department of Consumer Affairs.

23 2. On or about July 29, 2003, the Board of Registered Nursing (Board)
24 issued Registered Nurse License Number RN 622790 to Tracey Marie Kaplani (Respondent).
25 The Registered Nurse License was in full force and effect at all times relevant to the charges
26 brought herein and will expire on April 30, 2011, unless renewed.

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1 **JURISDICTION**

2 3. This Accusation is brought before the Board under the authority of the
3 following laws. All section references are to the Business and Professions Code unless otherwise
4 indicated.

5 **STATUTORY PROVISIONS**

6 4. Section 490 provides, in pertinent part, that a board may suspend or revoke
7 a license on the ground that the licensee has been convicted of a crime substantially related to the
8 qualifications, functions, or duties of the business or profession for which the license was issued.

9 5. Section 2750 provides, in pertinent part, that the Board may discipline any
10 licensee, including a licensee holding a temporary or an inactive license, for any reason provided
11 in Article 3 (commencing with section 2750) of the Nursing Practice Act.

12 6. Section 2761 of the Code states:

13 "The board may take disciplinary action against a certified or licensed nurse or deny
14 an application for a certificate or license for any of the following:

15 "(a) Unprofessional conduct, which includes, but is not limited to, the
16 following:

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18 "(f) Conviction of a felony or of any offense substantially related to the
19 qualifications, functions, and duties of a registered nurse, in which event the record of the
20 conviction shall be conclusive evidence thereof."

21 7. Section 2762 of the Code states:

22 "In addition to other acts constituting unprofessional conduct within the
23 meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person
24 licensed under this chapter to do any of the following:

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26 "(b) Use any controlled substance as defined in Division 10
27 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug or
28 dangerous device as defined in Section 4022, or alcoholic beverages, to an extent or in a manner

1 dangerous or injurious to himself or herself, any other person, or the public or to the extent that
2 such use impairs his or her ability to conduct with safety to the public the practice authorized by
3 his or her license.

4 “(c) Be convicted of a criminal offense involving the prescription,
5 consumption, or self-administration of any of the substances described in subdivisions (a) and (b)
6 of this section, or the possession of, or falsification of a record pertaining to, the substances
7 described in subdivision (a) of this section, in which event the record of the conviction is
8 conclusive evidence thereof.”

9 8. Section 2764 provides, in pertinent part, that the expiration of a license
10 shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the
11 licensee or to render a decision imposing discipline on the license. Under section 2811,
12 subdivision (b), the Board may renew an expired license at any time within eight years after the
13 expiration.

14 REGULATORY PROVISIONS

15 9. California Code of Regulations, title 16, section 1444, states, in pertinent
16 part:

17 “A conviction or act shall be considered to be substantially related to the
18 qualifications, functions or duties of a registered nurse if to a substantial degree it evidences the
19 present or potential unfitness of a registered nurse to practice in a manner consistent with the
20 public health, safety, or welfare.”

21 COST RECOVERY

22 10. Section 125.3 provides, in pertinent part, that the Board may request the
23 administrative law judge to direct a licensee found to have committed a violation or violations of
24 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
25 enforcement of the case.

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1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Conviction of Substantially-Related Crimes)**

3 11. Respondent is subject to disciplinary action under section 2761,
4 subdivision (f), and section 490, in conjunction with California Code of Regulations, Title 16,
5 section 1444, in that Respondent has been convicted of crimes substantially related to the
6 qualifications, functions or duties of a registered nurse, as follows:

7 a. On or about September 28, 2004, after pleading nolo contendere,
8 Respondent was convicted of one misdemeanor count of violating Vehicle Code section 23152,
9 subdivision (b) [driving while having a blood-alcohol content level of 0.08% or higher blood
10 alcohol], in the criminal proceeding entitled *The People of the State of California v. Tracey Marie*
11 *Kaplani* (Super. Ct. Los Angeles County, 2004, No. 4VN02898). Respondent was placed on
12 probation for three years, and fined \$390.00. The circumstances surrounding the conviction are
13 that on or about July 17, 2004, Respondent was arrested after officers of the Los Angeles Police
14 Department pulled her over for driving without headlights and observed signs of intoxication.

15 b. On or about July 17, 2007, after pleading nolo contendere, Respondent
16 was convicted of one misdemeanor count of violating Vehicle Code section 23152, subdivision
17 (b) [driving while having a blood-alcohol content level of 0.08% or high blood alcohol], in the
18 criminal proceeding entitled *The People of the State of California v. Tracy Marie Kaplani*
19 (Super. Ct. Los Angeles County, 2007, No. 7MB00807). Respondent was sentenced to two (2)
20 days in jail, placed on five (5) years probation, and fined. The circumstances surrounding the
21 conviction are that on or about February 8, 2007, Respondent was arrested after officers of the
22 Los Angeles Police Department pulled her over for driving without headlights and observed signs
23 of intoxication.

24 **SECOND CAUSE FOR DISCIPLINE**

25 **(Dangerous Use of Alcohol)**

26 12. Respondent is subject to disciplinary action under section 2761,
27 subdivision (a), as defined in section 2762, subdivision (b), in that Respondent used alcoholic
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1 beverages in a manner dangerous to herself, and the public. Complainant, now refers to and
2 incorporates all the allegations in paragraph 11, subparagraphs a and b, as though set forth fully.

3 **THIRD CAUSE FOR DISCIPLINE**

4 **(Conviction Involving the Consumption of Alcohol)**

5 13. Respondent is subject to disciplinary action under section, subdivision
6 (a), as defined in section 2762, subdivision (c), as result of Respondent's convictions involving
7 alcohol. Complainant, now refers to and incorporates all the allegations in paragraph 11,
8 subparagraphs a and b, as though set forth fully.

9 **PRAYER**

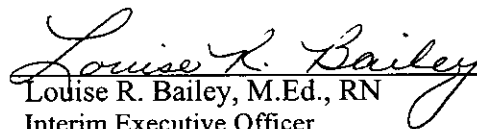
10 WHEREFORE, Complainant requests that a hearing be held on the matters herein
11 alleged, and that following the hearing, the Board issue a decision:

12 1. Revoking or suspending Registered Nurse License Number RN 604387,
13 issued to Respondent;

14 2. Ordering Respondent to pay the Board the reasonable costs of the
15 investigation and enforcement of this case, pursuant to Business and Professions Code section
16 125.3; and

17 3. Taking such other and further action as deemed necessary and proper.

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19 DATED: 7/31/09


Louise R. Bailey, M.Ed., RN
Interim Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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24 accusation.rtf
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25 07/28/09-ERP
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